IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8152 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KALIBEN WIFE OF NARESHBHAI RAMESHBHAI CHHARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8152 of 2004

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

MS HB PUNANI, LD. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 08/12/2004

ORAL JUDGMENT

Heard Mr.H.R. Prajapati, learned counsel appearing for the petitioner and Ms.H.B. Punani, ld.AGP,

appearing on behalf of the respondents.

2. The present petition is filed under Article 226 r/w. Articles 21 and 22(5) of the Constitution of India. The petitioner has challenged legality and validity of the order of detention dated 1st June, 2004, passed by the respondent no.2-Commissioner of Police, Ahmedabad City, under the purported exercise of powers vested with the Detaining Authority under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (for short 'the Act'). The petitioner has been branded as "bootlegger" within the meaning of Section 2(b) of the Act by the Detaining Authority.

3. For recording subjective satisfaction that the activity of the petitioner as bootlegger is threat to the maintenance of public order, the Detaining Authority has considered the fact of registration of three different criminal offences; one offence registered by Maninagar Police Station on 27th February, 2004 and other two offences registered by Prohibition Police Station (East Zone) on 6th April, 2004 and 29th May, 2004. On all the three occasions, the petitioner was found involved in storing, selling and transporting country liquor. The details of all the three cases are shown in a tabular form in the grounds for detention conveyed to the petitioner, when the impugned order came to be executed. The last offence registered against the petitioner is of 29th May, 2004 and on that day itself, the petitioner was apprehended by the Police alongwith another co-accused. I am told that both the accused persons have been detained by the orders of preventive detention under the Act.

4. The order of detention is assailed by the present petitioner on various grounds mentioned in the memo of the petition. However, the learned counsel appearing for the petitioner has focused his arguments mainly on the ground that there was no material with the Detaining Authority, except the fact of registration of three criminal cases punishable under the Bombay Prohibition Act against the petitioner and hence, the order of detention is bad because it was not necessary for the sponsoring authority to pray for preventive detention as the petitioner was in judicial custody in respect of the third offence registered on 29th May, 2004. From the papers itself, it is pointed out that the statement of the present petitioner was recorded by the Investigating Agency on 30th May, 2004. So till that date, the papers must be with the Investigating Agency. The order of detention is of 1st June, 2004. So the proposal to pass

order of detention must have been made on or about 31st May, 2004. So there is some force in the say of Mr.Prajapati that the order of detention has been passed in hot haste as the same was passed though the petitioner was in judicial custody. This Court has consistently observed that such order of detention in absence of extraordinary explanatory circumstances cannot sustain and also it is specifically established that the order of detention has been passed in hot haste. So on this sole ground the petition is required to be allowed.

6. For short, the Court has reason to believe that the order of detention has been signed mechanically without perusing the papers placed for considering them meticulously. So on the above ground, the order of detention is found unsustainable and, therefore, the same is required to be quashed and set aside.

7. In view of the above, the present petition is hereby allowed. The order of detention dated 1st June, 2004, passed by the respondent no.2 herein, is hereby quashed and set aside and the petitioner-detenu is hereby ordered to be set at liberty forthwith, if no longer required for any other case. Rule is made absolute with no order as to costs. Direct Service is permitted.

(C.K. Buch, J)

Aakar